

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1389

**Introduced by Assembly Member Patterson
(Principal coauthor: Assembly Member Grove)
(Coauthor: Assembly Member Chávez)**

February 27, 2015

~~An act to add Section 1164.1 to the Labor Code, relating to employment. An act to amend Sections 1154 and 1164 of, and to add Section 1164.1 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Patterson. ~~Agricultural Labor Relations Act: binding mediation.~~ *Agricultural labor relations: unfair labor practices.*

(1) *Existing law establishes the right of agricultural employees to form, join, or assist labor organizations to engage in collective bargaining activities with agricultural employers regarding wages, working conditions, or other aspects of employment. Existing law prohibits a labor organization or its agents from engaging in specified unfair labor practices.*

This bill would additionally prohibit a labor organization from abandoning or failing to represent a bargaining unit for 3 or more years. This bill would require the Agricultural Labor Relations Board to decertify a labor organization that violates this provision.

(2) *Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Once triggered, the mediation under these provisions is immediately scheduled*

at a time and location reasonably accessible to the parties and proceeds for 30 days, with an additional 30-day extension upon the mutual agreement of the parties.

This bill would deem members of the bargaining unit to be parties for the purposes of the mediation.

Existing law establishes the conditions and time periods under which an agricultural employer, as defined, or a certified labor organization representing agricultural employees may file a declaration with the Agricultural Labor Relations Board stating that the parties have failed to reach a collective bargaining agreement, thus triggering a board order for mandatory mediation.

Existing law authorizes a party, within 60 days of the order by the Agricultural Labor Relations Board taking effect, to file an action to enforce the order. Existing law prohibits an order of the board from being stayed during the pendency of any appeal of the order unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

This bill would condition the effect and enforcement of an order resulting from the binding mediation on the order being approved by a majority of the members of the affected bargaining unit.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1154 of the Labor Code is amended to
2 read:

3 1154. It shall be an unfair labor practice for a labor organization
4 or its agents to do any of the following:

5 (a) To restrain or coerce:

6 (1) Agricultural employees in the exercise of the rights
7 guaranteed in Section 1152. This paragraph shall not impair the
8 right of a labor organization to prescribe its own rules with respect
9 to the acquisition or retention of membership therein.

10 (2) An agricultural employer in the selection of his *or her*
11 representatives for the purposes of collective bargaining or the
12 adjustment of grievances.

13 (b) To cause or attempt to cause an agricultural employer to
14 discriminate against an employee in violation of subdivision (c)

1 of Section 1153, or to discriminate against an employee with
2 respect to whom membership in such organization has been denied
3 or terminated for reasons other than failure to satisfy the
4 membership requirements specified in subdivision (c) of Section
5 1153.

6 (c) To refuse to bargain collectively in good faith with an
7 agricultural employer, provided it is the representative of his *or*
8 *her* employees subject to the provisions of Chapter 5 (commencing
9 with Section 1156) of this part.

10 (d) To do either of the following: (i) To engage in, or to induce
11 or encourage any individual employed by any person to engage
12 in, a strike or a refusal in the course of his *or her* employment to
13 use, manufacture, process, transport, or otherwise handle or work
14 on any goods, articles, materials, or commodities, or to perform
15 any services; or (ii) to threaten, coerce, or restrain any person;
16 where in either case (i) or (ii) an object thereof is any of the
17 following:

18 (1) Forcing or requiring any employer or self-employed person
19 to join any labor or employer organization or to enter into any
20 agreement which is prohibited by Section 1154.5.

21 (2) Forcing or requiring any person to cease using, selling,
22 transporting, or otherwise dealing in the products of any other
23 producer, processor, or manufacturer, or to cease doing business
24 with any other person, or forcing or requiring any other employer
25 to recognize or bargain with a labor organization as the
26 representative of his *or her* employees unless such labor
27 organization has been certified as the representative of such
28 employees. Nothing contained in this paragraph shall be construed
29 to make unlawful, where not otherwise unlawful, any primary
30 strike or primary picketing.

31 (3) Forcing or requiring any employer to recognize or bargain
32 with a particular labor organization as the representative of his *or*
33 *her* agricultural employees if another labor organization has been
34 certified as the representative of such employees under the
35 provisions of Chapter 5 (commencing with Section 1156) of this
36 part.

37 (4) Forcing or requiring any employer to assign particular work
38 to employees in a particular labor organization or in a particular
39 trade, craft, or class, unless such employer is failing to conform

1 to an order or certification of the board determining the bargaining
2 representative for employees performing such work.

3 Nothing contained in this subdivision (d) shall be construed to
4 prohibit publicity, including picketing for the purpose of truthfully
5 advising the public, including consumers, that a product or products
6 or ingredients thereof are produced by an agricultural employer
7 with whom the labor organization has a primary dispute and are
8 distributed by another employer, as long as such publicity does
9 not have an effect of inducing any individual employed by any
10 person other than the primary employer in the course of his *or her*
11 employment to refuse to pick up, deliver, or transport any goods,
12 or not to perform any services at the establishment of the employer
13 engaged in such distribution, and as long as such publicity does
14 not have the effect of requesting the public to cease patronizing
15 ~~such~~ *the* other employer.

16 However, publicity which includes picketing and has the effect
17 of requesting the public to cease patronizing—~~such~~ *the* other
18 employer, shall be permitted only if the labor organization is
19 currently certified as the representative of the primary employer's
20 employees.

21 Further, publicity other than picketing, but including peaceful
22 distribution of literature which has the effect of requesting the
23 public to cease patronizing—~~such~~ *the* other employer, shall be
24 permitted only if the labor organization has not lost an election for
25 the primary employer's employees within the preceding 12-month
26 period, and no other labor organization is currently certified as the
27 representative of the primary employer's employees.

28 Nothing contained in this subdivision (d) shall be construed to
29 prohibit publicity, including picketing, which may not be prohibited
30 under the United States Constitution or the California Constitution.

31 Nor shall anything in this subdivision (d) be construed to apply
32 or be applicable to any labor organization in its representation of
33 workers who are not agricultural employees. Any such labor
34 organization shall continue to be governed in its intrastate activities
35 for nonagricultural workers by Section 923 and applicable judicial
36 precedents.

37 (e) To require of employees covered by an agreement authorized
38 under subdivision (c) of Section 1153 the payment, as a condition
39 precedent to becoming a member of such organization, of a fee in
40 an amount which the board finds excessive or discriminatory under

1 all circumstances. In making such a finding, the board shall
2 consider, among other relevant factors, the practices and customs
3 of labor organizations in the agriculture industry and the wages
4 currently paid to the employees affected.

5 (f) To cause or attempt to cause an agricultural employer to pay
6 or deliver, or agree to pay or deliver, any money or other thing of
7 value, in the nature of an exaction, for services which are not
8 performed or not to be performed.

9 (g) To picket or cause to be picketed, or threaten to picket or
10 cause to be picketed, any employer where an object thereof is
11 either forcing or requiring an employer to recognize or bargain
12 with a labor organization as the representative of his *or her*
13 employees, or forcing or requiring the employees of an employer
14 to accept or select ~~such~~ *the* labor organization as their
15 collective-bargaining representative, unless such labor organization
16 is currently certified as the representative of such employees, in
17 any of the following cases:

18 (1) Where the employer has lawfully recognized in accordance
19 with this part any other labor organization and a question
20 concerning representation may not appropriately be raised under
21 Section 1156.3.

22 (2) Where within the preceding 12 months a valid election under
23 Chapter 5 (commencing with Section 1156) of this part has been
24 conducted.

25 Nothing in this subdivision shall be construed to prohibit any
26 picketing or other publicity for the purpose of truthfully advising
27 the public (including consumers) that an employer does not employ
28 members of, or have a contract with, a labor organization, unless
29 an effect of such picketing is to induce any individual employed
30 by any other person in the course of his *or her* employment, not
31 to pick up, deliver, or transport any goods or not to perform any
32 services.

33 Nothing in this subdivision (g) shall be construed to permit any
34 act which would otherwise be an unfair labor practice under this
35 section.

36 (h) To picket or cause to be picketed, or threaten to picket or
37 cause to be picketed, any employer where an object thereof is
38 either forcing or requiring an employer to recognize or bargain
39 with the labor organization as a representative of his *or her*

1 employees unless such labor organization is currently certified as
2 the collective-bargaining representative of such employees.

3 (i) *To abandon or fail to represent the bargaining unit for a*
4 *period of three years or more. The board shall decertify a labor*
5 *organization that violates this subdivision.*

6 (i)

7 (j) Nothing contained in this section shall be construed to make
8 unlawful a refusal by any person to enter upon the premises of any
9 agricultural employer, other than his *or her* own employer, if the
10 employees of ~~such~~ *the* employer are engaged in a strike ratified or
11 approved by a representative of ~~such~~ *the* employees whom ~~such~~
12 *the* employer is required to recognize under this part.

13 SEC. 2. *Section 1164 of the Labor Code is amended to read:*

14 1164. (a) An agricultural employer or a labor organization
15 certified as the exclusive bargaining agent of a bargaining unit of
16 agricultural employees may file with the board, at any time
17 following (1) 90 days after a renewed demand to bargain by an
18 agricultural employer or a labor organization certified prior to
19 January 1, 2003, which meets the conditions specified in Section
20 1164.11, (2) 90 days after an initial request to bargain by an
21 agricultural employer or a labor organization certified after January
22 1, 2003, (3) 60 days after the board has certified the labor
23 organization pursuant to subdivision (f) of Section 1156.3, or (4)
24 60 days after the board has dismissed a decertification petition
25 upon a finding that the employer has unlawfully initiated,
26 supported, sponsored, or assisted in the filing of a decertification
27 petition a declaration that the parties have failed to reach a
28 collective bargaining agreement and a request that the board issue
29 an order directing the parties to mandatory mediation and
30 conciliation of their issues. "Agricultural employer," for purposes
31 of this chapter, means an agricultural employer, as defined in
32 subdivision (c) of Section 1140.4, who has employed or engaged
33 25 or more agricultural employees during any calendar week in
34 the year preceding the filing of a declaration pursuant to this
35 subdivision.

36 (b) Upon receipt of a declaration pursuant to subdivision (a),
37 the board shall immediately issue an order directing the parties to
38 mandatory mediation and conciliation of their issues. The board
39 shall request from the California State Mediation and Conciliation
40 Service a list of nine mediators who have experience in labor

1 mediation. The California State Mediation and Conciliation Service
2 may include names chosen from its own mediators, or from a list
3 of names supplied by the American Arbitration Association or the
4 Federal Mediation Service. The parties shall select a mediator from
5 the list within seven days of receipt of the list. If the parties cannot
6 agree on a mediator, they shall strike names from the list until a
7 mediator is chosen by process of elimination. If a party refuses to
8 participate in selecting a mediator, the other party may choose a
9 mediator from the list. The costs of mediation and conciliation
10 shall be borne equally by the parties.

11 (c) Upon appointment, the mediator shall immediately schedule
12 meetings at a time and location reasonably accessible to the parties.
13 Mediation shall proceed for a period of 30 days. Upon expiration
14 of the 30-day period, if the parties do not resolve the issues to their
15 mutual satisfaction, the mediator shall certify that the mediation
16 process has been exhausted. Upon mutual agreement of the parties,
17 the mediator may extend the mediation period for an additional
18 30 days. *Members of the bargaining unit shall be considered*
19 *parties for purposes of this subdivision and shall be entitled to*
20 *attend all meetings scheduled by the mediator.*

21 (d) Within 21 days, the mediator shall file a report with the
22 board that resolves all of the issues between the parties and
23 establishes the final terms of a collective bargaining agreement,
24 including all issues subject to mediation and all issues resolved by
25 the parties prior to the certification of the exhaustion of the
26 mediation process. With respect to any issues in dispute between
27 the parties, the report shall include the basis for the mediator's
28 determination. The mediator's determination shall be supported
29 by the record.

30 (e) In resolving the issues in dispute, the mediator may consider
31 those factors commonly considered in similar proceedings,
32 including:

33 (1) The stipulations of the parties.

34 (2) The financial condition of the employer and its ability to
35 meet the costs of the contract in those instances where the employer
36 claims an inability to meet the union's wage and benefit demands.

37 (3) The corresponding wages, benefits, and terms and conditions
38 of employment in other collective bargaining agreements covering
39 similar agricultural operations with similar labor requirements.

1 (4) The corresponding wages, benefits, and terms and conditions
2 of employment prevailing in comparable firms or industries in
3 geographical areas with similar economic conditions, taking into
4 account the size of the employer, the skills, experience, and training
5 required of the employees, and the difficulty and nature of the
6 work performed.

7 (5) The average consumer prices for goods and services
8 according to the California Consumer Price Index, and the overall
9 cost of living, in the area where the work is performed.

10 ~~SECTION 4.~~

11 *SEC. 3.* Section 1164.1 is added to the Labor Code, to read:

12 1164.1. An order issued by the mediator, the board, or the court
13 that would impose the terms of binding mediation pursuant Section
14 1164 shall not take effect or be enforceable until it is approved by
15 a majority of the agricultural employees of the bargaining unit
16 affected by the order.